

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
ON APPEAL

Applicant: Los Verdes III, L.L.C.  
Trademark: CHERRY CREEK COUNTRY CLUB  
Serial No.: 78/043560  
Filing Date: January 17, 2001

03 FEB - 8 PM 5:00  
RECEIVED

03-31-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #30

**APPLICANT'S REPLY BRIEF IN SUPPORT OF APPEAL**

Los Verdes III, L.L.C. ("Applicant") respectfully submits this Reply Brief in support of its appeal of the final refusal to register the mark CHERRY CREEK COUNTRY CLUB.

**ARGUMENT**

**A. Applicant's mark, CHERRY CREEK COUNTRY CLUB, is not geographically descriptive.**

The Trademark Examiner's Response Brief merely dismissed Applicant's arguments (which were supported by evidence) that the term "Cherry Creek" has a meaning other than the body of water that runs through Denver. In fact, "Cherry Creek" is used throughout the state to connote abundance and wealth, as demonstrated by the advertisement submitted with Applicant's brief. Rather than repeat its arguments here, Applicant respectfully notes that the Examiner's out-of-hand dismissal of valid legal arguments is the very reason that this appeal is pending.

Because the term "Cherry Creek" within the mark CHERRY CREEK COUNTRY CLUB does not *primarily* denote a geographical place to reasonable consumers in Colorado, and because customers might associate goods and services with the Country Club, but not with the Cherry Creek neighborhood of Denver, refusal of registration was improper under 15 U.S.C. 1052(e)(2). See *In re International Taste, Inc.*, 53 U.S.P.Q. 2d (BNA) 1604 (T.T.A.B. 2000); *World Carpets, Inc. v. Dick Littrell's New World Carpets*, 438 F. 2d 482, 486 (5<sup>th</sup> Cir. 1971); *In*

C

re Gale Hayman, Inc., 15 U.S.P.Q.2D (BNA) 1478 (T.T.A.B. 1990) ("[t]he mere fact that applicant's principal offices are in Century City, close to Sunset Boulevard, does not mandate a finding that a goods/place association should be presumed."). To the extent there is any doubt as to the primary significance of a mark, such doubt should be resolved in favor of the applicant. In re International Taste, Inc., 53 U.S.P.Q.2D (BNA) at 1611.

**B. CHERRY CREEK COUNTRY CLUB is not confusingly similar to the mark CHERRY CREEK and design.**

The Examiner has dismissed out of hand Applicant's *duPont*<sup>1</sup> analysis, in effect arguing that the only two of the thirteen factors the Board really should consider is the Examiner's perception that the two marks are identical, and that the goods are allegedly identical. The Examiner's reliance on the perceived similarity of portions of the marks is improper, as one cannot "dissect" the marks in order to find confusion. *See In re National Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985). Applicant respectfully disagrees, because as the analysis in its opening brief shows, the marks, *taken as a whole*, are not identical, and the manner in which the mark is used, as well as the likely channels of commerce for each mark, make it unlikely that the public will be confused or deceived by the existence and use of both marks.

**CONCLUSION**

For the reasons set out in this Brief, and in more detail in Applicant's Opening Brief, Applicant respectfully requests that the Board reverse the Examiner's refusal to register the mark CHERRY CREEK COUNTRY CLUB, and order the mark passed to publication in all classes for which application was made.

---

<sup>1</sup> *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

Respectfully submitted this 31st day of March, 2003.

Ireland, Stapleton, Pryor & Pascoe, P.C.

By: Barbara Weil Laff  
Barbara Weil Laff  
Melissa R. Kaufman  
1675 Broadway, Suite 2600  
Denver, CO 80202  
303-628-3647  
303-623-2062 (FAX)  
**Attorney for Applicant**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as Express Mail No. EL 925455784 US, in an envelope addressed to "Assistant Commissioner for Trademarks," 2900 Crystal Drive, Arlington, VA 22202-3513, Box TTAB Fee" on March 31, 2003.

Monika McDonald  
Signature

Monika McDonald  
Typed or printed name